



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,672	08/08/2006	Hamid Safari	27637-4	9233
33417 7590 02/22/2008 LEWIS, BRISBOIS, BISGAARD & SMITH LLP 221 NORTH FIGUEROA STREET SUITE 1200 LOS ANGELES, CA 90012				
EXAMINER				
MEYER, KATY E				
ART UNIT		PAPER NUMBER		
3618				
MAIL DATE		DELIVERY MODE		
02/22/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/588,672

**Applicant(s)**

SAFARI ET AL.

**Examiner**

Katy Meyer

**Art Unit**

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 12/5/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 8, 10, 16, and 17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,820,878. Although the conflicting claims are not identical, they are not patentably distinct from each other. All of the limitations in claims 1, 2, 8, 10, 16, and 17 can be found in patented claim 6 (i.e. an upper, center, and lower compartment; front, rear, and side panels on each compartment; both shelves; panels being movable between an open and a closed position; removably attached panels; a flexible hinge; openings in said shelves; and grated shelves).

Claim 20 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,820,878. Although the conflicting claims are not identical, they are not patentably distinct from each other. All of the limitations in claim 20 can be found in patented claim 8 (i.e. a continuous positive airway pressure machine comprising an upper, center, and lower compartment; front, rear, and side panels on each compartment; both grated shelves; openings in said shelves; and removably attached panels).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3618

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 3, 4, 5, 7, 10, 11, 14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Clegg (US 2002/0096844).**

As for claim 1, Clegg discloses a transportation unit (Fig. 1) capable of housing a medical device comprising an upper compartment, a center compartment and a lower compartment (110), said compartments having a front panel (50), a rear panel (22) and two opposite side panels (24 and 26), a shelf (100) between said upper compartment and said center compartment, a shelf (100) between said center compartment and said lower compartment, the front panel or panels being movable between an open and a closed position, to expose the inside of said compartments (see Figs. 1 and 3).

As for claim 3, Clegg discloses a retractable handle (92).

As for claim 4, Clegg discloses handles (49, see 68a) on both side panels of the upper compartment.

As for claim 5, Clegg discloses handles (49, see 68a) on both side panels of the upper compartment and on both side panels of the upper compartment (see 68b).

As for claim 7, Clegg discloses two wheels (70) attached to the bottom of the unit.

As for claim 10, Clegg discloses shelves having an opening (107) therein.

As for claim 11, Clegg discloses a unit wherein the entire front is movable from a closed position to an open position (see 50, Figs. 1 and 3).

As for claim 14, Clegg discloses a front of the unit held in the closed position by snaps (

As for claim 18, Clegg discloses side and rear panels that are not movable.

**Claims 1, 6, 8, and 11 – 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hung (US 5,678,904).**

As for claim 1, Hung discloses a transportation unit (Fig. 1) capable of housing a medical device comprising an upper compartment (A), a center compartment (B), and a lower compartment (C), said compartments having a front panel (311, 312, 313), a rear panel and two opposite side panels (see Fig. 4), a shelf (4a) between said upper compartment and said center compartment, a shelf (4b) between said center compartment and said lower compartment, the front panel or panels being movable between an open and a closed position, to expose the inside of said compartments (see Figs. 1 and 2).

As for claim 11, substantially the entire front of unit is movable to an open position, exposing all of said compartments (see Fig. 2).

As for claims 8 and 12, Hung discloses a flexible hinge (see Fig. 2).

As for claim 13, Hung discloses a movable flap (311, 312, 313) opposite each compartment.

As for claim 14, Hung discloses zipper (314).

As for claim 15, Hung discloses flaps that are held in a closed position by zippers (314).

As for claims 16 and 17, Hung discloses grated shelves comprising openings (see 320a).

As for claim 18, Hung discloses side and rear panels that are not movable.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hung (US 5,678,904).**

Hung meets all the limitations of the claimed invention, but does not disclose flaps on the side panels. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the unit disclosed by Hung with flaps on the side panels to facilitate access to the compartments from all angles. It has been held that mere duplication of the parts of an invention involves only routine skill in the art.

**Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landsberger et al. (US 2002/012579) in view of Hung (US 5,678,904).**

Landsberger et al. disclose a transportation unit (Fig. 1) capable of housing a medical device comprising an upper compartment, a center compartment, and a lower compartment (see Fig. 1), said compartments having a front panel (300), a rear panel (206) and two opposite side panels (280, 210), a solid shelf (20) between said upper compartment and said center compartment, a solid shelf (20) between said center compartment and said lower compartment, both of said shelves having an opening (22) cut therein, a solid shelf at the bottom of the lower compartment, a front panel (300) movable from a fully open position to a fully closed position to cover the front of the unit.

Landsberger et al. do not disclose a flexible hinge. Hung discloses a movable panel attached to a unit by a flexible hinge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the unit disclosed by Landsberger et al. with the type of hinged panel taught by Hung so that the panel would be less obstructive to the other compartments when in the open position.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katy Meyer whose telephone number is (571)272-5830. The examiner can normally be reached on Monday - Friday, 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Ellis/



Art Unit: 3618

Supervisory Patent Examiner, Art  
Unit 3618

/K. M./

Examiner, Art Unit 3618